UNITED STATES DISTRICT COURT
DISTRICT OF MAINE

LORI FLETCHER,	)	
	)	
Plaintiff	)	
	)	
v.	)	Civil No. 98-0105-B
	)	
TOWN OF CLINTON, et al.,	)	
	)	
Defendants	)	

MEMORANDUM OF DECISION[1]

Pending before the Court is Defendant Town of Clinton's Motion for Summary Judgment, first filed as part of a Motion for Summary Judgment by all Defendants on November 27, 1998. In that Motion, the Town's sole argument was that it could not be liable for failing to train regarding law that was not "clearly established." In light of the Court's conclusion in connection with the individual Defendants that the law was indeed "clearly established," the Court denied the Motion as to the Town without discussion.

The matter has now been remanded for reconsideration of the Town's arguments for the reason that the undersigned "incorrectly conflated the issues involved in the motion for summary judgment brought by the Town and the

[1] Pursuant to Federal Rule of Civil Procedure 73(b), the parties have consented to allow the United States Magistrate Judge to conduct any and all proceedings in this matter.

individual defendants." *Fletcher v. Town of Clinton*, 1999 WL 997806 (Nov. 8, 1999). Because, however, Defendant presented no facts or argument in support of judgment other than its assertion that the law was not clearly established, an assertion rejected by the Court of Appeals, there was in essence no "Motion" to address on remand. Accordingly, the parties were ordered to file memoranda and statements of fact in support of their relative positions.

Defendant has now filed a Memorandum in which it asserts that Plaintiff has failed to state a claim upon which relief may be granted with respect to the Town. Plaintiff understandably objects to Defendant raising this issue for the first time at this stage of the litigation. However, the Court of Appeals has made it clear that the issue before us is whether Plaintiff has evidence of a "'policy statement, ordinance, regulation, or decision officially adopted and promulgated by [the municipality's] officers'" or that the officers' actions were "'pursuant to governmental "custom."'" *Id*. at *11, (quoting *Monell v. Department of Soc. Serv.*, 436 U.S. 658, 690, 691 (1978)). Alternatively, Plaintiff could prevail with evidence of a failure to train amounting to "'deliberate indifference to the rights of persons with whom the police come into contact.'" *Id*. (quoting *City of Canton v. Harris*, 489 U.S. 378, 388 (1989)).

Plaintiff asserts that Officers Genest and Bessey "were implementing and manifesting a policy set by those in authority in the Town of Clinton and following

the lead of their supervisor and Chief of Police." Pltf. Mem. at 4. Plaintiff then describes how the officers were acting pursuant to the direction of their supervisor, with the approval of the Chief of Police. Plaintiff has presented no evidence, however, that either their supervisor or the Chief is a person with authority to make policy decisions on behalf of the Town. Nor has she presented evidence that the officers were acting according to a custom. Plaintiff's 'belief' that the actions about which she complains occurred pursuant to a policy or custom is simply not enough. *See, Pltf. Supp. Statement of Facts at* ¶ 5. "Something more than liability on the part of the individual defendants must be shown to impose liability on the municipality." *Fletcher*, 1999 WL at *11. Plaintiff has offered nothing more despite this admonition. The Motion for Summary Judgment on behalf of the Town of Clinton is hereby GRANTED.

SO ORDERED.

Eugene W. Beaulieu
U.S. Magistrate Judge

Dated on: December 20, 1999